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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re STEVE M., a Person Coming  
Under the Juvenile Court Law.

B287803  
(Los Angeles County  
Super. Ct. No. FJ54509)

THE PEOPLE,

Plaintiff and Respondent,

v.

STEVE M.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County, Benjamin R. Campos, Commissioner. Affirmed.

Loyola Law School Center for Juvenile Law and Policy,  
Samantha Buckingham for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief  
Assistant Attorney General, Lance E. Winters, Senior Assistant

Attorney General, Susan Sullivan Pithey and Mary Sanchez,  
Deputy Attorneys General, for Plaintiff and Respondent.

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## I. INTRODUCTION

Steve M. appeals from a judgment under Welfare and Institutions Code section 602, sustaining an allegation of attempted second degree robbery. Steve contends that the juvenile court erred in denying his motion to dismiss the petition under *California v. Trombetta* (1984) 467 U.S. 479 (*Trombetta*) and *Arizona v. Youngblood* (1988) 488 U.S. 51 (*Youngblood*) because the prosecution failed to retain surveillance video of the robbery. Steve additionally argues that the trial court erred in denying his motion to exclude his statement to the police, which was obtained in violation of his *Miranda* rights. (*Miranda v. Arizona* (1966) 384 U.S. 436.) He further contends that the police detained him in violation of his Fourth Amendment rights and the robbery victim's in-field identification of him as a robber was unduly suggestive. Finding no error, we affirm.

## II. BACKGROUND

### A. *Summary of Facts*

Here, we provide a brief summary of facts. We will discuss further relevant facts as we address each of Steve's arguments below. On December 4, 2016, after midnight, the victim was riding home on his bicycle when he observed three teenagers on the sidewalk. The three teenagers blocked the victim's path and

one of them tried to push the victim off his bicycle, while another stated, “Do you have any money, where is your cellphone?” All three attempted to take the victim’s property. The victim used his bicycle to defend himself. He did not give any of his property to the teenagers. Instead, he fled and telephoned the police.

While on their way to the scene of the attempted robbery, police officers observed three teenagers, including Steve, who matched the description that had been provided by the victim. The officers detained the three minors. The victim arrived within minutes of the detention and identified each minor as an attempted robber.

The police arrested Steve and the other two minors and transported them to a police station. After being advised of his *Miranda* rights, Steve made an incriminating statement to a law enforcement officer.

## *B. Procedural History*

On February 7, 2017, the Los Angeles County District Attorney’s Office filed a petition pursuant to Welfare and Institutions Code section 602 against Steve, who was 17-years-and-nine-months old at the time of the attempted robbery. The District Attorney filed a single charge, alleging that on December 4, 2016, Steve committed the felony of attempted second degree robbery (Pen. Code, §§ 664, 211). The District Attorney requested that Steve be declared a ward of the court.

On June 2, 2017, Steve moved to exclude his statements and suppress evidence of the victim’s show-up identification of him as one of the attempted robbers. Steve argued he was detained without reasonable suspicion or probable cause and

thus his statements and identification by the victim must be excluded at trial. Steve further argued that his statements to the police should be excluded because they were obtained in violation of his *Miranda* rights and involuntarily made. Steve also contended that the victim's show-up identification was unduly suggestive, unnecessary, and unreliable. Finally, Steve moved to dismiss the charge based on the prosecution's failure to preserve material evidence. The juvenile court denied each of Steve's motions.

On November 29, 2017, Steve admitted the allegation in the Welfare and Institutions Code section 602 petition. As part of his plea agreement, Steve reserved his right to appeal the juvenile court's pretrial rulings. The juvenile court imposed various conditions on Steve, including 12 to 36 months of probation. Steve subsequently filed a notice of appeal.

### III. DISCUSSION

#### A. *Failure to Preserve Video Footage*

Steve contends the juvenile court erred by denying his motion to dismiss based on the prosecution's failure to preserve video surveillance evidence.<sup>1</sup> According to Steve, the exculpatory value of the video was apparent to the officers, and the officers acted in bad faith in failing to preserve it.

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<sup>1</sup> We grant Steve's motion to augment the record to include his motions to dismiss pursuant to *Trombetta* and *Youngblood*.

1. Relevant facts

On December 4, 2016, at 12:37 a.m., Officer Eduardo Macias of the University of Southern California (USC) Department of Public Safety (DPS) received a radio call of an attempted robbery at Vermont and 36th Street. The three suspects were described as male, Hispanic, approximately 17-years old, and wearing hoodies.

DPS maintained a dispatch center, a room occupied by operators who monitored closed-circuit television (CCTV) screens. The dispatch center contained at least 30 screens. DPS maintained over 175 cameras within the boundaries of the USC campus. Cameras were located in the areas where the attempted robbery and the in-field identification occurred.

On December 4, 2016, Officer Macias heard one of the CCTV operators, Operator Balles, state over the radio that she saw three males matching the suspects' description walking eastbound, through Century Alley and Cardinal Alley from Vermont towards McClintock. This was the only statement made by a CCTV operator that Macias heard on December 4, 2016, from midnight to 10:00 a.m. Officer Macias did not know whether any video footage of the arrest or detention existed. Nor did he seek to preserve any such footage as he was not responsible for gathering video for the investigation. It is possible that a CCTV camera captured video related to the attempted robbery.

Detective Aaron Drake testified about DPS's retention of video footage. Drake received a subpoena from minor's counsel requesting video footage of the incident and responded that he could find no such footage. CCTV cameras retain a record of

video footage for 30 days before it is “looped over” and no longer available. Unless a request to preserve the video is made, the video is not retained. By the time Detective Drake received the subpoena, he could not retrieve any video because they had been “looped” over.

Antonio Soria, the surveillance operations manager for DPS, testified that the CCTV cameras were functioning properly on the day of the attempted robbery. If an operator observed a crime actually occurring on camera, the operator could request that the video be automatically exported and saved to a different computer server. Soria did not know of anyone requesting video related to the robbery on December 4, 2016.

The juvenile court denied the motion to dismiss for destruction of evidence, concluding that the officers did not act in bad faith: “I find the officers [were] more like the Keystone cops than the CIA . . . . I think it’s sloppy at best.”

## 2. Legal analysis

The prosecution has a duty under the due process clause of the Fourteenth Amendment to preserve evidence “that might be expected to play a significant role in the suspect’s defense.” (*Trombetta, supra*, 467 U.S. at p. 488.) Such evidence must “possess an exculpatory value that was apparent before the evidence was destroyed . . . .” (*Id.* at p. 489.) In cases involving evidence that is only potentially exculpatory, “unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law.” (*Youngblood, supra*, 488 U.S. at p. 58.)

We review the juvenile court’s motion to dismiss for failure to preserve evidence for substantial evidence. (*People v. Montes* (2014) 58 Cal.4th 809, 837.) “In assessing a claim of insufficiency of evidence, the reviewing court’s task is to review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible, and of solid value’ in support of the court’s decision. [Citation.] ““““If the circumstances reasonably justify the trier of fact’s findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment.” [Citations.]” [Citation.]” (*People v. Alvarez* (2014) 229 Cal.App.4th 761, 774 (*Alvarez*).)

Steve contends that the exculpatory value of video footage was apparent to the police such that the prosecution was obliged to preserve it prior to destruction. We disagree. We will assume for purposes of this opinion that Steve met his burden of demonstrating the existence of some video footage of the robbery and field identification, which officers failed to preserve. As we explain more fully below, Steve told a police detective that he had only asked the victim for bus money and the victim responded by reaching for a knife. According to Steve, “[t]he video footage *may* have depicted that very scenario, which would exculpate Steve . . . [and] the cameras *could* have captured many scenarios that would have exculpated Steve.” (*Italics added.*) It was Steve’s burden to demonstrate the apparent exculpatory value of the video surveillance footage. (*People v. Lucas* (2014) 60 Cal.4th 153, 221, disapproved on another ground by *People v. Romero and Self* (2015) 62 Cal.4th 1, 53, fn. 19.) Steve’s speculation that video might exculpate him falls far short of meeting the

materiality standard of *Trombetta*. (*People v. Fauber* (1992) 2 Cal.4th 792, 829 [“The mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish “materiality” in the constitutional sense”].)

Steve alternatively argues that even if the surveillance footage was only potentially useful, the juvenile court erred in concluding that the police did not act in bad faith. According to Steve, because a police report written by Officer Cesar Jimenez referenced possible video footage, and Macias admitted to reviewing the report, Macias acted in bad faith in failing to preserve that footage. Steve’s argument is without merit. First, the police report written by Officer Jimenez is not part of the record and we thus decline to draw any inference about what Macias may have seen in that report. Second, Macias stated that he reviewed the police report prior to testifying on June 28, 2017, which has no bearing on whether Macias acted in bad faith in failing to preserve video footage within 30 days of the attempted robbery, which occurred six months earlier. This is particularly true in light of evidence that Macias was not specifically responsible for gathering evidence. Substantial evidence supports the juvenile court’s finding that the prosecution did not allow video surveillance footage to be destroyed in bad faith. None of the testimony elicited at the hearing suggested that the officers had knowledge that the video footage had potentially exculpatory value.

Steve’s citation to *Alvarez, supra*, 229 Cal.App.4th 761, is unavailing. In *Alvarez*, three defendants were arrested for robbery. (*Id.* at p. 764.) The police maintained and controlled video cameras in the city, including a video camera covering the

parking lot where the robbery occurred. (*Id.* at p. 767.) On the night of the purported robbery, one of the defendants specifically asked a detective on the scene to check for any relevant video. (*Ibid.*) At the preliminary hearing, defense counsel advised the court that defendant had issued a subpoena for video from two private businesses in the area of the robbery but the recipients of the subpoena had not responded. (*Id.* at p. 765.) Counsel requested that a bench warrant issue. (*Ibid.*) The prosecutor interrupted and stated that the “People are already in the process of obtaining the video . . . . At this point in time, there’s no possibility that they are going to be destroyed. We’re within 30 days.” (*Ibid.*) Nonetheless, the prosecution did not seek to obtain any video footage prior to it being overwritten by the passage of time. (*Id.* at p. 768.) The trial court dismissed the complaint, finding that law enforcement had acted in bad faith. (*Id.* at p. 777.) The Court of Appeal affirmed, finding substantial evidence supported this conclusion. (*Ibid.*)

Steve’s case includes none of the indicia of bad faith described in *Alvarez*. Steve had not made a request for surveillance video until after 30 days had elapsed. Moreover, the prosecution never sought to preclude the defense from obtaining the video, by stating that it would retrieve it, or otherwise.<sup>2</sup>

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<sup>2</sup> Steve avers, without citation to the record or explanation, that “the People . . . actively took steps that it knew would prevent Steve from being able to obtain the very footage that led to his arrest.” Absent either a citation to the record or further argument, we reject this conclusory statement.

Based on these facts, we find no error in the juvenile court's denial of Steve's motion to dismiss.<sup>3</sup>

## B. *Miranda* Waiver

Steve next argues that the juvenile court erred in denying his motion to exclude his statements to Los Angeles Police Department Detective Nicholas Gallego because (1) as a matter of law, juveniles must expressly waive their *Miranda* rights; and (2) Steve's waiver of his *Miranda* rights was not voluntary.

### 1. Relevant Facts

Steve was a special education student who participated in general education classes, but received accommodations pursuant

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<sup>3</sup> If we accepted Steve's argument, we would require all law enforcement officers to preserve video footage possibly related to every arrest and every suspected crime, which would be contrary to the bad faith requirement of *Youngblood*. The United States Supreme Court was unwilling "to read the 'fundamental fairness' requirement of the Due Process Clause . . . as imposing . . . an undifferentiated and absolute duty to retain and to preserve all material that might be of conceivable evidentiary significance in a particular prosecution. We think that requiring a defendant to show bad faith on the part of the police both limits the extent of the police's obligation to preserve evidence to reasonable bounds and confines it to that class of cases where the interests of justice most clearly require it, *i.e.*, those cases in which the police themselves by their conduct indicate that the evidence could form a basis for exonerating the defendant." (*Youngblood, supra*, 488 U.S. at p. 58.)

to an Individualized Education Program (IEP). His accommodations included “extended time for processing (30-40 seconds)” test questions. If Steve did not understand a question, his teacher would re-word it. Further, to ensure that Steve understood, a teacher could require Steve to repeat back concepts or directions. Steve had “ADHD-like [attention deficit hyperactivity disorder] behaviors.”

Steve’s California English Development Test (CELDT) results from 2013-2014 indicated that his speaking proficiency was “intermediate,” and his listening proficiency was “early intermediate.” CELDT described students with early intermediate listening proficiency as “typically understand[ing] basic vocabulary and syntax, with frequent errors and limited comprehension. They understand and follow simple multi-step oral directions.”

Steve has experienced childhood trauma and was the subject of prior dependency referrals. Steve’s brother had been removed from the home. Steve’s stepfather sexually abused Steve’s sister. Steve witnessed his mother being abused by the stepfather. Steve’s mother opined that his substance abuse was related to exposure to domestic violence.

After being detained, on December 4, 2016, Steve was interviewed by Detective Gallego at the police station. Steve was unhandcuffed and took a seat across a small table from Gallego. Steve leaned against the table, with his head tilted toward Detective Gallego, and his forearms folded below. Gallego began the interview by asking Steve his name, his age, his address, and with whom he lived. Steve answered each of the questions. Gallego then asked, “What’s your phone number?” Steve responded, “32 . . . dang I don’t really know it, it’s inside my

phone. Cause I had barely got that phone so I got to remember it.”

Gallego then advised Steve of his *Miranda* rights:

“Det. Gallego: Alright I’m going to read you your rights, alright.

“[Steve]: Hmm?

“Det. Gallego: I’m going to read you your rights.

“[Steve]: Alright.

“Det. Gallego: You have the right to remain silent. You understand?

“[Steve]: Yes sir.

“Det. Gallego: Anything you say[] may be used against you in the court do you understand?

“[Steve]: Yes sir.

“Det. Gallego: You have the right to the presence of an attorney during [sic] before and during any questioning do you understand?

“[Steve]: Yes sir.

“Det. Gallego: If you cannot afford an attorney one will be appointed to you free of charge before any questioning if you want do you understand?

“[Steve]: Yes sir.”

Gallego did not expressly ask Steve whether he wished to waive his *Miranda* rights. Instead, after completing the *Miranda* warnings, Gallego stated, “We going to talk about why you are here.”

Steve responded, “Mhmm.”

Gallego continued, “Why do you think you are here?”

Steve answered, “Well, I was out with a couple of my friends and then like, some other ones I don’t know what they

were doing, so like I don't know what they were doing to that guy."

After further discussion, Gallego stated, "I want you to tell me what happened because it's all on camera." This was false. Gallego added that one of the other minors, Jairo, said that he (Jairo) did not do anything but that "some other people did it and he said it was you." This was true.

Steve denied that he had attempted to rob the victim; he had only asked the victim for bus money and the victim responded by pulling out a knife.

Detective Gallego asked, "So you did push him?"

Steve responded, "Yes sir."

At the end of the interview, Officer Gallego asked why, if Steve was not trying to rob the victim, he was identified by the victim as a robber.

"[Steve]: Because he thought

"Det. Gallego: Because he thought you were gonna try to rob him? Because you were going to?

"[Steve]: Yes sir."

The juvenile court denied Steve's motion to exclude his statement, finding that Steve "appeared to the court to understand."

## 2. Analysis

““In order to combat [the] pressures [of custodial interrogation] and to permit a full opportunity to exercise the privilege against self-incrimination, the accused must be adequately and effectively apprised of his rights” to remain silent and to have the assistance of counsel. [Citation.] “[I]f the

accused indicates in any manner that he wishes to remain silent or to consult an attorney, interrogation must cease, and any statement obtained from him during interrogation thereafter may not be admitted against him at his trial” [citation], at least during the prosecution's case-in-chief [citations].’ [Citation.] ‘Critically, however, a suspect can waive these rights.’ [Citation.] To establish a valid waiver of *Miranda* rights, the prosecution must show by a preponderance of the evidence that the waiver was knowing, intelligent, and voluntary.” (*People v. Nelson* (2012) 53 Cal.4th 367, 374-375 (*Nelson*).) “Juveniles, like adults, may validly waive their *Miranda* rights.” (*People v. Jones* (2017) 7 Cal.App.5th 787, 809.) An implied waiver occurs when, after being apprised of his or her rights, a defendant “willingly answer[s] questions after acknowledging that he understood those rights.” (*People v. Lessie* (2010) 47 Cal.4th 1152, 1169 (*Lessie*).)

“When a court’s decision to admit a confession is challenged on appeal, ‘we accept the trial court’s determination of disputed facts if supported by substantial evidence, but we independently decide whether the challenged statements were obtained in violation of *Miranda* . . . .’” (*Lessie, supra*, 47 Cal.4th at p. 1169.) “Determining the validity of a *Miranda* rights waiver requires ‘an evaluation of the defendant’s state of mind’ [citation] and ‘inquiry into all the circumstances surrounding the interrogation’ [citation].” (*Nelson, supra*, 53 Cal.4th at p. 375.) Factors to consider include his or her age, experience, education, background, intelligence, and whether the juvenile has capacity to understand the warnings given, the nature of his or her Fifth Amendment rights, and consequences of the waiver. (*Id.*, citing

*Fare v. Michael C.* (1979) 442 U.S. 707, 725; *In re T.F.* (2017) 16 Cal.App.5th 202, 210.)

We disagree with Steve’s initial proposition that minors cannot, as a matter of law, impliedly waive their *Miranda* rights. Our Supreme Court has held to the contrary. (See *Nelson, supra*, 53 Cal.4th at p. 375, citing *Lessie, supra*, 47 Cal.4th at p. 1169.)

Moreover, our review of the record demonstrates that here, Steve had the capacity to understand the nature of his rights and the consequences of his waiver. While Steve suffered childhood trauma and received accommodations at school, the video of Gallego’s interview demonstrates that Steve understood his *Miranda* rights. Detective Gallego advised Steve of each of his rights, using short sentences. He then asked Steve whether he understood each short sentence, and only continued after Steve responded, “Yes sir.” Gallego did not rush through the warnings, as Steve contends, and Steve did not hesitate before responding that he understood.

Nor was this a case where Steve demonstrated any reluctance to ask for clarification. To the contrary, while he generally responded promptly to each of Detective Gallego’s questions with, “Yes Sir,” “Nah,” “Yeah,” or “No sir,” on other occasions, he responded with “Huh?” or “Hmm.” On these latter occasions, Gallego repeated the question.<sup>4</sup> This record supports

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<sup>4</sup> We cite an example below:  
“Det. Gallego: What were the other boys doing?”  
“[Steve]: Hmm?”  
“Det. Gallego: What were the other boys doing?”  
“[Steve]: Nothing sir.”  
“Det. Gallego: No?”  
“[Steve]: No my other boy . . . he was just trying to explain to him that we were just trying to get like three dollars, so we

an inference that when Steve responded, “Yes sir” each time Detective Gallego asked him if he understood his *Miranda* rights, he did so because he in fact understood those rights and the consequences of his waiver.

Steve points to portions of the record and argues that they support a conclusion that he did not understand Gallego’s questions or his advisement of rights. Without responding to each of Steve’s evidentiary arguments, we note that when we undertake a substantial evidence review, if the evidence reasonably justifies the juvenile court’s facts, whether they might also reasonably support a contrary finding does not warrant reversal. (*Alvarez, supra*, 229 Cal.App.4th at p. 774.) In any event, the record, viewed in its proper context, does not support Steve’s description of events.

For instance, Steve contends that the fact that he did not know his telephone number evidenced such a serious lack of comprehension that the detective should have known that he was unable to understand his *Miranda* warnings. In his brief, Steve quotes his response to Detective Gallego’s request for his telephone number as “dang, I don’t really know.” But, as we describe above, the entirety of Steve’s response was, “32 . . . dang

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could catch the bus and then when I told him like hey could I get some spare change so we can get the bus that’s when he popped out something and I got scared and that’s when my boy . . . was trying to calm him down . . .

“Det. Gallego: Why was he on the ground?”

“[Steve]: Huh?”

“Det. Gallego: Why was that guy on the ground?”

“[Steve]: He was never on the ground[.]”

“Det. Gallego: Never?”

“[Steve]: No sir.”

I don't really know it, it's inside my phone. Cause I had barely got that phone so I got to remember it." That Steve had recently obtained a phone is not evidence that he did not understand his *Miranda* rights.

Based on this record, we find no error. Steve's listening proficiency was sufficient for him to understand questions being asked by Gallego. Moreover, by responding to Gallego's questions after being advised of his *Miranda* rights, Steve impliedly waived his right to remain silent.

#### *D. Voluntariness of Steve's Confession*

Steve next asserts that the trial court erred in denying his motion to exclude his statements on due process grounds because his will was overborne by Gallego's use of coercive tactics, which included Gallego's use of chewing tobacco, his statement to Steve to put his hat back on, and his use of a ruse to falsely state that he had seen a video of the robbery.<sup>5</sup>

"The question posed by the due process clause in cases of claimed psychological coercion is whether the influences brought to bear upon the accused were ["such as to overbear petitioner's will to resist and bring about confessions not freely self-determined." [Citation.]] In determining whether or not an accused's will was overborne, 'an examination must be made of ["all the surrounding circumstances—both the characteristics of

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<sup>5</sup> Steve additionally contends that his educational record demonstrates that he did not understand the questions that Gallego asked. As we discuss above, our review of the record supports a finding that Steve did understand Gallego's questions.

the accused and the details of the interrogation.” [Citation.]”  
(*People v. Thompson* (1990) 50 Cal.3d 134, 166.)

“On appeal, ‘we independently examine the record, but, to the extent the facts conflict, we accept the version favorable to the People if supported by substantial evidence.’” (*People v. Farnam* (2002) 28 Cal.4th 107, 181; *In re Elias V.* (2015) 237 Cal.App.4th 568, 576-577 (*Elias V.*).

We have reviewed the record and conclude that substantial evidence supports a conclusion that Steve’s will was not overborne by Gallego’s conduct. First, there is no evidence that Gallego used chewing tobacco as an investigative tactic. Video of the interview reflects that on a number of occasions, Gallego raised an empty paper cup to his mouth, which supports a finding that he chewed tobacco during the interview. But he never spat in an audible manner or otherwise engaged in conduct that suggested his use of tobacco was part of an aggressive investigative tactic. Second, during the interview, Steve took off his baseball hat and placed it on the table next to him. Less than one minute prior to the conclusion of the interview, Gallego told Steve to put his hat back on. In context, this can fairly be interpreted as Detective Gallego’s indication that the interview was finished rather than an effort to overbear Steve’s will.

Finally, we are not persuaded that Officer Gallego’s use of a ruse, that is, his statement to Steve that “it’s all on camera,” was a coercive tactic that rendered Steve’s confession involuntary. “Lies told by the police to a suspect under questioning can affect the voluntariness of an ensuing confession, but they are not per se sufficient to make it involuntary.” (*People v. Farnam, supra*, 28 Cal.4th at p. 182.) Steve’s citation to *Elias V.* is inapposite. (*Elias V., supra*, 237 Cal.App.4th at p. 570.) There, a 13-year-old

was charged with lewd acts on a child. (*Ibid.*) During an interrogation, the detective repeatedly stated as a fact that Elias had touched the victim sexually, which Elias repeatedly denied. (*Ibid.*) The detective finally suggested that Elias had touched the victim either because he found it exciting or because he was curious. (*Id.* at p. 575.) Elias rejected the first choice. (*Ibid.*) The detective then stated again that Elias did it, to which the minor responded, “For curiosity.” (*Id.* at pp. 585-586.) The court of appeal reversed the juvenile court’s denial of Elias’s motion to exclude his statements. (*Id.* at p. 600.) It found the confession was coerced and involuntary on three grounds: “(1) Elias’s youth, which rendered him “most susceptible to influence,” [citation], and “outside pressures,” [citation].’ [Citation.]; (2) the absence of any evidence corroborating Elias’s inculpatory statements; and (3) the likelihood that [the detective’s] use of deception and overbearing tactics would induce involuntary and untrustworthy incriminating admissions.” (*Id.* at pp. 586-587.)

Steve has not demonstrated that Officer Gallego obtained his statement in a similarly unconstitutional manner. Steve was 17, not 13. Further, Gallego already possessed significant evidence corroborating Steve’s inculpatory statements: the victim and a co-minor identified Steve as one of the attempted robbers; and, a co-minor admitted to Officer Macias that he (the co-minor) had tried to rob the victim.<sup>6</sup> ““The courts have prohibited only those psychological ploys which, under all the circumstances, are so coercive that they tend to produce a

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<sup>6</sup> As Officer Macias detained the three, he asked one of the co-minors, “Do you know why you’re being detained?” The co-minor responded, “Yes, because we fucked up. I tried to take that guy’s money.”

statement that is both involuntary and unreliable.”” (*People v. Williams* (2010) 49 Cal.4th 405, 443.) Given these circumstances, we find the juvenile court did not err in concluding Steve’s confession was voluntary.

#### *E. Reasonable Suspicion to Detain Steve*

Steve contends DPS officers did not have reasonable suspicion to detain him and the juvenile court thus erred in failing to suppress evidence of that unlawful detention. We disagree.

“The Fourth Amendment permits brief investigative stops . . . when a law enforcement officer has “a particularized and objective basis for suspecting the particular person stopped of criminal activity.” [Citations.] The “reasonable suspicion” necessary to justify such a stop “is dependent upon both the content of information possessed by police and its degree of reliability[,]” [citation] . . . tak[ing] into account “the totality of the circumstances . . . .” [Citation.] Although a mere “hunch” does not create reasonable suspicion, [citation], the level of suspicion the standard requires is “considerably less than proof of wrongdoing by a preponderance of the evidence,” and “obviously less” than is necessary for probable cause, [citation].” (*People v. Brown* (2015) 61 Cal.4th 968, 981, quoting *Navarette v. California* (2014) 572 U.S. 393, 396-397.) In making our determination, we examine “the totality of the circumstances” in each case. (*People v. Dolly* (2007) 40 Cal.4th 458, 463.)

“On review of the trial court’s denial of a suppression motion, we defer to the trial court’s express or implied factual findings if supported by substantial evidence, but exercise our

independent judgment to determine whether, on the facts found, the search or seizure was reasonable under the Fourth Amendment.” (*In re H.M.* (2008) 167 Cal.App.4th 136, 142.)

There is ample evidence to support a finding that Officer Macias’s stop of Steve was supported by reasonable suspicion. The radio dispatcher provided a description of the robbers, which had been provided by the victim, within moments of the attempted robbery.<sup>7</sup> The dispatcher described the robbers as male, Hispanic, approximately 17 years old, and wearing hoodies. Officer Macias encountered Steve and the two co-minors within 300 yards of the location of the attempted robbery. They matched the age, gender, ethnicity, and attire of the suspects. Moreover, the minors were the only people who matched the victim’s description present in the area. We find no error on this ground.

#### F. *In-field Identification*

Steve contends that the victim’s in-field identification of the three minors was unduly suggestive. ““In deciding whether an extrajudicial identification is so unreliable as to violate a defendant’s right to due process, the court must ascertain (1) ‘whether the identification procedure was unduly suggestive and unnecessary,’ and, if so, (2) whether the identification was nevertheless reliable under the totality of the circumstances.” [Citation.] “The defendant bears the burden of demonstrating the existence of an unreliable identification procedure.” (*People v.*

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<sup>7</sup> This case does not involve an anonymous tip and is thus distinguishable from *Florida v. J.L.* (2000) 529 U.S. 266, cited by Steve.

*Gonzalez* (2006) 38 Cal.4th 932, 942.) “We review deferentially the trial court’s findings of historical fact, especially those that turn on credibility determinations, but we independently review the trial court’s ruling regarding whether, under those facts, a pretrial identification procedure was unduly suggestive.” (*Id.* at p. 943.) “Appellant must show unfairness as a demonstrable reality, not just speculation.” (*In re Carlos M.* (1990) 220 Cal.App.3d 372, 386; accord, *People v. Garcia* (2016) 244 Cal.App.4th 1349, 1359.)

Officer Jimenez testified that on the night of the robbery, he spoke with the victim, who informed him that three teenagers had attempted to take his property. Jimenez then learned by radio that three suspects who matched the description provided by the victim had been detained. Jimenez read the victim a standard field identification show-up admonishment, which advised that: “The person is in temporary custody as a possible suspect only. [¶] The fact that the person is in police custody does not indicate his or her guilt or innocence, and, [¶] The purpose of the show-up is either to eliminate or identify the person as a suspect involved in the crime.” The victim made no indication that he did not understand the admonishment.

Officer Jimenez then drove the victim to the location where the suspects were detained. Five other police officers were present when Jimenez and the victim arrived. The victim sat in the back seat of Jimenez’s patrol car. The minors were each handcuffed and stood about 20 feet away from Jimenez’s patrol car. An officer walked a minor, one at a time, toward the patrol car and then back again. The victim identified each of the minors

as a robber. The victim also told Jimenez that he recognized the animal-type hoodie worn by Steve.<sup>8</sup>

The identification was not unduly suggestive. “[T]he law favors field identification measures when in close proximity in time and place to the scene of the crime . . . .” (*In re Richard W.* (1979) 91 Cal.App.3d 960, 970.) Here, Officer Jimenez’s admonition mitigated against the suggestive nature of the identification. (See *People v. Garcia*, *supra*, 244 Cal.App.4th at pp. 1360-1361.) Moreover, neither the fact that the minors were detained together or handcuffed was so unduly suggestive as to taint the identification. (See *ibid.* [finding “curbside lineup” involving three suspects was not unduly suggestive where victim was admonished not to infer guilt]; *In re Carlos M.*, *supra*, 220 Cal.App.3d at p. 386 [“the mere presence of handcuffs on a detained suspect is not so unduly suggestive as to taint the identification”].)

Steve also contends the show-up identification was unnecessary as there was no urgent circumstance such as danger to the community or the victim’s imminent death. Contrary to his argument, in-field show-up identifications are favored “because the element of suggestiveness inherent in the procedure is offset by the reliability of an identification made while the events are fresh in the witness’s mind, and because the interests of both the accused and law enforcement are best served by an immediate determination as to whether the correct person has been apprehended.” (*In re Carlos M.*, *supra*, 220 Cal.App.3d at

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<sup>8</sup> Steve wore a sweatshirt that had a print of shark teeth along the edge of the hood.

p. 387.) Thus, the lack of urgency does not support excluding the in-field identification.

Finally, we conclude the identification was reliable, as it was made after an admonishment, within minutes of the attempted robbery, 300 yards away from the attempted robbery, and was corroborated by one of the co-minor's statement that he had been involved in the attempted robbery and Steve's statements to Detective Gallego. The juvenile court did not err in denying Steve's motion to exclude evidence of the victim's in-field identification.

#### **IV. DISPOSITION**

The judgment is affirmed.  
NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KIM, J.

We concur:

BAKER, Acting P.J.

MOOR, J.